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GENERAL NOTICE

NOTICE 915 OF 2014

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004 (ACT NO. 39 OF 2004)

DRAFT NATIONAL AIR QUALITY APPEAL REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations pertaining to the processing, consideration of, and decision on appeals, under section 53(k) and (p) read with section 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

By post to: The Director-General: Department of Environmental Affairs
Attention: Mr Thamsanqa Zwane
Private Bag X447
PRETORIA
0001

By hand at: Environment House, 473 Steve Biko Street, Arcadia, Pretoria, 0083.

By e-mail: tzwane@environment.gov.za.

Any enquiries in connection with the draft regulations can be directed to Mr S Shabalala at 012 399 9351.

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE OF REGULATIONS

Interpretation

1. (1) In these Regulations any word or expression to which a meaning has been assigned in the Act, and unless the context requires otherwise—

“**appeal administrator**” means the person who administers the appeal on behalf of the appeal authority;

“**appeal authority**” in relation to a decision issued in terms of the Act, is—

- (a) the Minister; or
- (b) the MEC; or
- (c) a person delegated the power to decide on appeals by the Minister or MEC, as the case may be; or
- (d) the appeal authority identified in section 62(4) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), in the case of Metropolitan and District Municipalities.

“**appellant**” means a person contemplated in regulation 4;

“**applicant**” means a person to whom a decision has been issued in terms of the Act;

“**independent**”, in relation to a person appointed as a member of an appeal panel, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; or

- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“person” includes a juristic person;

“the Act” means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).

- (2) When a period of days must be reckoned in terms of these regulations, the period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday, and the period of 15 December to 5 January must be excluded from the reckoning of days.

Purpose of Regulations

2. The purpose of these Regulations is to regulate the procedure contemplated in section 53(k) of the Act relating to the submission, processing and consideration of, and decision on an appeal.

Application of Regulations

3. (1) These Regulations are applicable to a decision that is subject to an appeal to the appeal authority.
- (2) No appeal is available if the appeal authority took the decision himself or herself in his or her capacity as the licensing authority.

CHAPTER 2**ADMINISTRATION AND PROCESSING OF APPEALS****Appeal submission**

4. (1) An appellant must submit the appeal to the appeal administrator, the applicant, and any known interested and affected party, if applicable, within 20 days from the date that the decision was sent to the applicant.
- (2) An appeal submission must be—
 - (a) submitted in writing in the form obtainable from the appeal authority; and
 - (b) accompanied by—
 - (i) a statement setting out the grounds of appeal;
 - (ii) supporting documentation which is referred to in the appeal submission and which did not form part of the documentation considered when the original decision was made by the licensing authority; and
 - (iii) a statement by the appellant that confirm compliance with regulation 4(1).

Responding statement

5. The applicant, the decision-maker, interested and affected parties and organs of state must submit their written response to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.

Appeal panel

6. (1) If the appeal authority is of the view that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source the expert advice or constitute the appeal panel within 10 days from the date of receipt of an instruction from the appeal authority.
- (2) The expert or the appeal panel must provide advice to the appeal administrator within 10 days from the receipt of an instruction from the appeal administrator.

Decision on appeal

7. (1) The appeal administrator must make a recommendation on the appeal to the appeal authority within 30 days of receipt of the written response referred to in regulation 5, in the event that an appeal panel has not been constituted.

- (2) The appeal administrator must make a recommendation on the appeal to the appeal authority within 10 days of receipt of the written response referred to in regulation 6(2), in the event that an appeal panel has been constituted.
- (3) The appeal authority must reach a decision on an appeal within 20 days of the recommendation on the appeal by the appeal administrator.
- (4) The decision contemplated in subregulation (3) must contain written reasons for the decision.

Communication

8. Communication in terms of these Regulations must be in accordance with section 47D of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

CHAPTER 3

GENERAL MATTERS

Transitional arrangements

9. An appeal lodged prior to the commencement of these Regulations, and which is still pending when these Regulations takes effect, must be finalised in terms of the legislation that applied at the time when the appeal was lodged.

Effect and commencement

10. These Regulations are called the National Air Quality Appeal Regulations, 2014, and take effect on the date of publication in the *Gazette*.
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